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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

LOFDAHL, JORDAN M

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,817

Applicant(s)

SCHNEIDMILLER, RODNEY G.

Examiner

Jordan Lofdahl

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,9,10,14 and 16-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-8,11-13,15,19-24 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

The election of species requirement is also read as a restriction requirement. Please refer to MPEP § 818.03(a).

Response to Arguments

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the solid funnel of Mah and the whisker funnel of Wilson are read as art recognized equivalents. Also, the whisker funnel of Wilson does not have a circular opening at the bottom portion which the solid funnel of Mah discloses. This lack of an opening reduces the opportunity for insects to escape.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-8, 11-13, 15, 19-24 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mah (6134826) and further in view of Wilson (6158165).

As to claims 1 and 30, Mah discloses a container having a volume with a first opening (fig. 2); a light assembly (21) and an attractant (47). Not disclosed is a chemical attractant. Wilson, however, discloses a bait made of chemicals (17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Mah with an additional attractant of Wilson to create another means to attract insects to the device. Mah discloses a funnel that ensure insects do not escape the trap. Not disclosed is a device, as modified, comprising a whisker assembly that ensured insects do not escape the trap. Wilson, however, discloses a whisker assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute funnel aperture of the device, as modified, of Mah, with the whisker assembly of Wilson to create a more reliable one way gate means to ensure insects do not escape the trap. The solid funnel of Mah and the whisker funnel of Wilson are read as art recognized equivalents.

As to claim 4, not disclosed are the strands formed of light conductive material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the strands of light conductive material; since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

As to claim 5, not disclosed are the strands made of the list of materials as disclosed in the instant claim. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device, as modified, of Mah with strands made of the list of materials as disclosed in the instant claim; since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

As to claim 6, not disclosed are the strands having an average diameter in the range of 0.05 mm to about 2.00 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the strands with an average diameter in the range of 0.05 mm to about 2.00 mm; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 7, disclosed is the base end larger than the tip end.

As to claim 8, disclosed is a non-circular pattern.

As to claim 11, not disclosed are the strands of length in the range of 13mm to about 150mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the lengths of the strand in the range of 13mm to about

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150mm; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 12, disclosed is the first opening positioned in a first plane and the strands extend toward one another at an angle in the range of about 15 to about 45 degrees relative the first plane ('165; fig. 1).

As to claim 13, disclosed is the first opening positioned in a first plane and the strands extend toward one another at an angle less than about 90 degrees relative to the first plane ('165; fig. 1).

As to claim 15, not disclosed are the tips of adjacent strands in the range of about 1mm to about 20mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the tips of adjacent strands in the range of about 1mm to about 20mm ; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 19, disclosed is an upper end (19); the volume (29) being disposed opposite the upper end and the first opening being located between the upper end and the volume.

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As to claim 20, not disclosed are separable top and bottom portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device with separable top and bottom portions, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

As to claim 21, disclosed is a generally ovoid shape.

As to claim 22, disclosed is the bulb (21) near the opening. Not disclosed is the bulb within a distance of approximately 155mm or less. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the bulb within a distance of approximately 155mm or less of the opening; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 23, disclosed is a device not disclosed are the strands formed from a light conductive material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strands from a light conductive material; since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

As to claim 24, disclosed is a device, as modified, where the light travels through the strands.

As to claim 27, not disclosed is a light emitting diode that emits light having a frequency in the range of about 80 to about 565 nanometers. Disclosed is the light source capable of being changed to optimally attract certain pests. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Mah with a LED, having a frequency in the range of about 80 to about 565 nanometers to create a means to attract certain pests.

As to claim 28, not disclosed is a light emitting diode that emits blue light. Disclosed is the light source capable of being changed to optimally attract certain pests. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Mah with a blue LED, to create a means to attract certain pests.

As to claim 29, not disclosed is a photosensitive device. It would have been obvious to one having ordinary skill in the art at the time was made to comprise the device, as modified, with a photosensitive device; since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

Allowable Subject Matter

Claims 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703.305.7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jml



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